

79

**CENTRAL ADMINISTRATIVE TRIBUNAL
JODHPUR BENCH, JODHPUR**

Original Application 183/2011

Date of Order : 28.11.2011

CORAM: HON'BLE DR. K.B. SURESH, MEMBER (J) &
HON'BLE MR. SUDHIR KUMAR, MEMBER (A)

Jetha Ram Bhati S/o Shri Motiram Bhati, aged 57 years, resident of Plot No. 48, Gaj Singh Colony, Banar Road, Jodhpur, at present employed on the post of Supervisor, Barrack and Stores, in the office of Garrison Engineer (Army), Central (MES), Multan Lines, Jodhpur.

.....Applicant.

By Mr. A.K.Kaushik, Advocate.

Versus

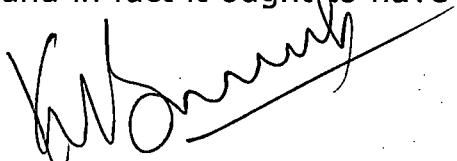
1. Union of India through Secretary, Ministry of Defence, Government of India, Raksha Bhawan, New Delhi.
2. Headquarters, Chief Engineer, Southern Command, Pune-411001.
3. Headquarters Chief Engineer, MES, Bhopal Zone, Sultania Infantry Lines, Bhopal.
4. Commander Works Engineer, Army, Multan Lines, Jodhpur.
5. Garrison Engineer (Army) Central, MES, Multan Lines, Jodhpur.

..... Respondents

By Mr. Kuldeep Mathur, Advocate.

**ORDER (ORAL)
[PER DR. K.B.SURESH, JUDICIAL MEMBER]**

Heard both counsels and examined the pleadings, as also the entire records of O.A. No. 136 of 2010, which is a fore-runner of the present litigation. Two grounds are basic for consideration. One is whether the applicant had been transferred out from Jodhpur to Mount Abu for an administrative requirement, or on the basis of any mala fide. The second ground raised by the applicant is that in fact in Mount Abu there is no post available for him, and in fact it ought to have been reserved.

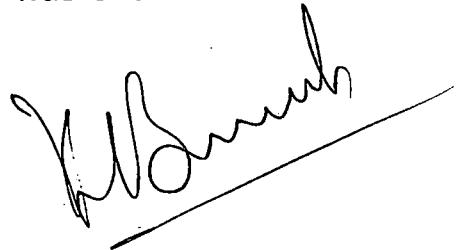


79

for a military personnel, and not for a civil personnel, and, therefore, if a post is not available, transfer cannot take place.

2. In the earlier round of litigation this Tribunal directed that the matter be re-examined by the respondents, and pass a reasoned order mentioning rules and the guidelines under which the applicant can be transferred from civilian post to military post. It was further directed that till the passing of the final order by the respondents, the applicant shall not be disturbed from the present place of posting. It has been held that the applicant would be free to seek redressal of his grievance if he is not satisfied with the decision taken by the respondents.

3. At this point and for the first time the learned counsel for the applicant has taken a view that in fact the applicant had never asked for a choice of posting at Mount Abu. He had apparently asked for Banar, and, apparently, Banar is just across on the run way at Jodhpur. The respondent found that at Banar vacancies may not be available, and, therefore, according to them applicant is accommodated at Mount Abu according to his third choice. We have gone through the records and found that in the rejoinder filed soon after the reply and para 4.2 of the reply in OA No. 136/2010, while the respondents have raised this issue of applicant making a choice for Mount Abu, but, which is not denied anywhere in the rejoinder. We found that during the hearing also, this question was taken-up, and admitted that applicant had in fact sought for a posting at Mount Abu, but then the question which had to be considered in that was, whether at Mount Abu, any such post was available or not. We also note



that in the representation filed after order in OA no. 136/2010, also, the choice at Mount Abu was not denied.

4. In the second round, that is now, when the case was taken up, the applicant ^{has} now raised a question that he had never asked for Mount Abu at all. Since at the cogent time, this fact was not denied, even though opportunities were available, we have to hold that the applicant would ^{have} ~~be~~ given a choice of Mount Abu. We had examined the matter further and found that out of 35 years of his service, the applicant had served at Jodhpur for about 32 years. Therefore, the only question to be considered is whether the applicant can be posted at Mount Abu, whereas the applicant now says that a post suitable for him is not available. We had sought the help of the counsels in understanding the scope of the work of military and civilian employees, and we found that work in the Barracks and Stores was similar, and, therefore, inter-changeable, and since no prejudice is attributable, there is no reason for the applicant to claim that he cannot be accommodated at Mount Abu.

5. We also had the benefit of hearing the applicant personally since we wanted to ensure that he had or not applied for a choice posting at Mount Abu. He would deny having made any such choice available to the respondents, but indications from his rejoinder and the order of the Tribunal above in OA No. 136/2010, and, the representations which followed it, indicates that he had in fact made a misrepresentation.

6. Even otherwise, also, having served for long long years at Jodhpur, it is not reasonable for a Government employee to claim that he cannot be transferred out, since he has an All India



Transfer liability. He does not point out any specific reason as to why he should not be transferred out of Jodhpur other than that of personal difficulties. Those personal difficulties ~~have~~ not been significantly identified or explained. Therefore, we are unable to find-out whether such personal difficulties of such nature has to warrant ~~the~~ continuance of the applicant at Jodhpur itself. Even though, in the earlier O.A., a slight angle of mala fide is pointed-out against the concerned authorities, but the Hon'ble Apex Court ~~has~~ held that malafides must be specifically alleged, and proven, and it cannot be on vague issues. Therefore in the cumulative totality of the circumstances, the OA cannot lie, and in the face of our findings that a misrepresentation had occurred in the pleadings leading to a legal misadventure, we dismiss the OA with cost of Rs. 5,000/-. Even in the representation submitted by him on 26.05.2011, there is no mention by him of not having given Mount Abu as a choice, even though the order canvassed such a position. Even then he had said that his father is 91 years of age, and that his son in law had passed away, but even if we have to consider these as grounds, these may not be sufficient ~~for~~ ^{for} ~~the~~ ^{the} not ~~transferring~~ ^{transferring} an employee who has served for more than a quarter of a century at a place and wants to be continued as such.

7. In view of above the OA is dismissed with cost of Rs. 5,000/-.

(Sudhir Kumar)
Administrative Member

(Dr.K.B.Suresh)
Judicial Member